

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO: 04-11192-NMG

FILED
CLERK'S OFFICEEric Kelley,
Plaintiff,

v.

Sheriff DiPaola, Superintendent Norton,
Officer Thurmond Hall, Sgt. Flynn,
Billerica House of Correction Legal Dept.,
Attorney Lee Gartenberg, Attorney John
Goggin, Commissioner of the
Massachusetts Board of Health,
Commissioner of Public Safety,
and Billerica Board of Health,
Defendants.further complaints of
Continued violations.
Plaintiff / Pre trial
Detainee Awaiting
trial In a maximum
Security Infamous
Punishment Setting.

The plaintiff, who is
a pre-trial detainee with
the presumption of innocence &
unadjudged guilty is at the
time of this writing in the
H.S.U. (Hospital Segregation
Unit) at the States highest
Security Penitentiary. This violation
pursuant to Brown v. Commissioner
(where a district court SENTENCED
inmate was not allowed placement
in Walpole) Yet the unsentenced
plaintiff has been there for
aprox 3 weeks.

In Support is A
Affidavit.

Eric Kelley (PRG)

(Affidavit of
Eric Kelley)

I truthfully
depose;

1) I was sent from
SBCC (Sawa Baranawski)
max. security to MCI Walpole
(Cedar Junction) the only
State Penitentiary. I
was sent because I
informed (SBCC) Warden
Louise Russo that
placing a Pre-trial detainee
in a Prison (Punishment)
Setting was unconstitutional.

2) the plaintiff is
fearful of his life
w/ noted, documented
enemies in Cedar Junction.

3) Based on his notification
to Prison officials he was
locked up in the H.S.U.
(Hospital SEGREGATION Unit)
rather than transferred to
any safe D.O.C. Prison Plaintiff
has not acquired any Disciplinary
Report or infraction or hearing.

Affidavit
(cont.)

4) Although no disciplinary infractions or hearings exist, Plaintiff is housed in H.S.U. for approx 2 weeks;

1) Plaintiff is not getting law library although he is Pro Se. in his criminal case.

Violations of Health Codes;

- 1) No Sprinklers (fire alarm or fire extinguishers in the cell. (or corridors).
- 2) old lice filled mattresses, feces, urine, saliva dried w/ blood on doors, walls, beds.
- 3) No laundry provisions
- 4) 30-40 degree room temperatures
- 5) Confiscated all Plaintiffs legal works.
- 6) one sox, 1 TEE shirt, no undershorts and others (see ex. grievance)

See Memorandum "(Jenkins)" case

Respectfully

Eric Kelley
Pro Se

Cert. of
Service
No Copy
Machine
Access.

COMMONWEALTH OF MASSACHUSETTS**DEPARTMENT OF CORRECTION****INMATE GRIEVANCE FORM****FORWARD TO INSTITUTIONAL GRIEVANCE COORDINATOR (IGC)**

Name KELLEY ERIC Grievance# 9935 Institution OLD COLONY CORRECTIONAL
 Commit No. A93317 Housing SEGREGATION UNIT Date Of Incident 20050420 Date Of Grievance 20050425

Complaint from nahual st. jail, to concord, and now at OCCC I've been placed in segregation absent a disciplinary hearing or sanctions. During all that time (3 weeks) I have not obtained a P.I.N. # to call any lawyer(s) I finally received a form at OCCC and was denied the number of attorneys I could call I was told I was limited to 5 lawyers numbers. I requested 11 and all the lawyers have a significant role in my legal matters. What policy limits # of lawyers an inmate can call???

Remedy Requested 8 direct attorney call until I get a approved P.I.N. # and approval of All lawyers.

Staff Recipient McKenzie Amanda CO I

Staff Involved

Signature

RECEIPT BY INSTITUTIONAL GRIEVANCE COORDINATOR

Date Received 20050425 Decision Date _____

Signature _____

Final Decision _____

Decision _____

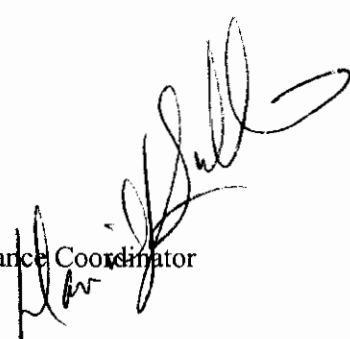
Signature _____ Date _____

Denied grievances may be appealed to the Superintendent within 10 working days of Institution Grievance Coordinator's decision.

INMATE RECEIPT

Name KELLEY ERIC Institution OLD COLONY CORRECTIONAL
 Commit No. A93317 Grievance# 9935 Date Received 20050425
 Signature McKenzie Amanda CO I

TO: Eric Kelley, A93317

FROM: Sergeant Daniel J. Sullivan, Acting Institution Grievance Coordinator 

DATE: May 11, 2005

Re: **INMATE GRIEVANCE FORM – Returned/Unaccepted**

Pursuant to review of the Inmate Grievance Form submitted by you with the dated as 5/18/05, outlining several issues/concerns, allegations/complaints, Be advised that your allegation does not fall under the category of an "Emergency". I am returning the grievance to you pursuant to;

491.11 Emergency Grievances

- (2) Emergency grievances shall be evaluated by the Institutional Grievance Coordinator to determine whether it is, in fact, an emergency. If the matter is determined not to be an emergency, the grievance form shall be returned to the inmate for proper filing.

And

491.09 Initiating A Grievance

- (1) Content of Grievance Forms - All grievances should be legible and must contain the following information:
- (A) the date of occurrence of the incident;
 - (B) the name of current institution;
 - (C) the name of institution of complaint;
 - (D) a brief statement of facts;
 - (E) the remedy requested;
 - (F) the signatures of both the inmate and staff recipient

And

491.08 General Requirements

- (3) A grievance may only be filed concerning one subject matter.

Accordingly, please complete the grievance form(s) (Attachment "A") in accordance with the policy and remit as regular grievances. Also, an Inmate ID # would be appropriate. Thank you.

DJS

CC: File

FORM "A"

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION
INMATE GRIEVANCE FORM**

INMATE'S NAME: Eric Kelley		INMATE'S #: A -	DATE: 5/17/05
INSTITUTION: MCI Cedar Junction		DATE OF INCIDENT: Upon Arrival	
INSTRUCTIONS: <ol style="list-style-type: none"> 1. Refer to 103 CMR 491, Inmate Grievance Policy. 2. Check off a grievance type that best describes your grievance in Block A. 3. In Block B, give a brief and understandable summary of your complaint/issue. 4. List any actions you may have taken to resolve this matter in Block C. Be sure to include the identity of staff members you have contacted. 5. Provide a Requested Remedy in Block D. 			
A. Check off one grievance type only (Listed on reverse side). When filing an Emergency Grievance select Emergency and one additional grievance type. <input checked="" type="checkbox"/> EMERGENCY			
B. Give a brief and understandable summary of your complaint/issue. Additional paper may be used, if necessary. 1) I'm representing myself on 52A I've been denied law library access. (no envelopes or writing paper) 2) I've been denied Atty. Phone calls. 3) I have one Sox, one T shirt, one no undershorts 4) I am not given my "street cloths" for court. 5) The cells are freezing cold. 6) There's no fire extinguishers 7) my legal documents for my Pro Le Crim. & ^{civil} crim. have been confiscated 8) I get no hr recreation.			
C. List any action taken to address/resolve this matter. Include the identity of staff members you have contacted. 6 hours a week library (Bonds v. Smith) A P.I.N. #, Sox 5x tshirts 4-8-50 shorts, street cloths for court. Some heat in the cells, fire extinguishers return of my legal papers, 1 hr recreation.			
D. Provide your Requested Remedy. I'm on 52(A) w/o any disciplinary fractions to warrant Placement in Walpole. \$ 500.00 and transfer to MCI Norfolk this grievance is pursuant to P.R.L.A.			

Inmate's Signature

Eric Kelley

Date:

5/18/05

Staff Recipient

Date:

****DENIED GRIEVANCES MAY BE APPEALED TO THE REVIEWING AUTHORITY WITHIN 10 BUSINESS DAYS.**

(Inmate receipts/responses will be generated via the Inmate Management System.)



Mitt Romney
Governor

Kerry Healey
Lieutenant Governor

Edward A. Flynn
Secretary

The Commonwealth of Massachusetts
Executive Office of Public Safety
Department of Correction
Old Colony Correctional Center
One Administration Road
Bridgewater, Massachusetts 02924
www.mass.gov/doc



Kathleen M. Dennehy
Commissioner

James Bender
Acting Deputy Commissioner

Bernard Brady
Acting Superintendent

May 12, 2005

Eric Kelley A93317
MCI - Cedar Junction
P.O. Box 100
South Walpole, MA 02071

Dear Mr. Kelley:

Superintendent Brady has referred your correspondence regarding your claims of lack of access to the law library and your lawyer to this office for a response.

You were received at OCCC on 4/8/05 and transferred to SBCC4/28/05. A review of records indicates that, contrary to your claims, you were allowed access to your attorney and did receive a legal visit while at OCCC.

A review of library logs reveals that you received photocopies on 4/13/05 and 4/20/05.

I trust this has addressed any concerns.

Sincerely,

Carol Lawton
Director of Classification

CL/ljh
CC: B. Brady, Superintendent

no mention
of law library
access because
I never was
allowed any

1) yes I received
copies.
2) yes I had an
Atty. visit. (not my
crim. or
civil
lawyer)

BUT IT PROVES that
for 20 days I was
Not allowed law library
Access!

**Massachusetts Department of Correction
 Inmate Telephone System Number Request Form**

INMATE NAME: Eric Kelley INMATE PIN #: _____

COMMITMENT #: A93317 UNIT: Seq LANGUAGE PREFERENCE:
 ENGLISH ☒ SPANISH ☐

Inmate Signature: Eric Kelley Date: 4/19/05

Add (A)/ Delete (D)	Name of Called Party	Relationship	Area Code	Telephone Number
1.	Atty Kernahan Buck	Attorney	617	491-8565
2.				
3.				
4.	you are only allowed 5 calls			
5.	numbers, so please call it back			
6.				
7.				
8.				
9.				
10.				

THE FOLLOWING (APPROVED) ATTORNIES AND PRIVILEGED NUMBERS WILL NOT BE RECORDED

Name	Area Code	Telephone Number
Atty. Kernahan Buck	617	491-8565
Atty. Eva Clark	617	522-7870
Atty (ADA) Masqi King	617	619-4000
Atty. Kenneth Deimond	617	494-4400
Atty. Kenneth Demara	617	482-0600
Atty. Victoria Kellner	617	482-6212
Atty. Nancy Reimer	617	406-4500

Your acceptance of a PIN and use of inmate telephones shall be deemed as consent to the conditions and restrictions placed upon inmate telephone calls, including call monitoring, recording, and call detail. 3 way calling not allowed.

Reviewed by Unit Staff Member (name and signature) _____ Date _____

* Other Atty listings on back

Conditions & Violations MCI Cedar Junction Walpole

Affidavit

Absent any disciplinary infractions

As a pretrial detainee, unadjudged
guilty I Eric Kelley was subjected
to the following:

- 1) 3 weeks of: A) 24 hour lock-up,
B) No hot water, C) No law library access
(Probe in my criminal & civil matters)
D) cell temperatures avg. 45° never exceeding
50° E) No laundry access F) 1 pr. socks, 1 T-shirt +
1 undershorts G) No phone calls H) No Recreation
I) A unit and cell with no fire extinguishers
J) No cosmetics K) Not allowed reading material

The aforementioned cruel & unusual
<Punishment> occurred 24 hrs. daily.

Truthfully Deposed:
Eric Kelley
5/05

Overall treatment
and conditions are
worse than 10 Block & DP4.

FILED
CLERK OF COURT
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
COLUMBUS, OHIO
MAY 21 - 8 AM 11:34
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
COLUMBUS, OHIO

CERTIFICATE OF SERVICE

I Eric Kelley hereby depose
that I ~~sent a copy to~~
did not send the defendants
a copy of here attached
Motion
by way of regular mail (1st class)
Pursuant to Bounds v. Smith
because a inmate in Walpoles
H.S.U. do not receive law library
access.

And a good faith
notification copy
~~to~~ letter to
defendants [Doc]

Truthfully-

Eric Kelley

5/21/05

Atty. Ward Weizel (508) 851-6536
Eric Wetzel 617 557 1186 (Supreme court)
Atty. Robert Goldstein 617 742 7045
Atty. Stephen Hrones 617 327 4019

note:

All of these
lawyers play some
significant legal
role in my life.

Eric Kelley

(~~ATF~~)
~~1924~~
ORDERS
JAMES B. HARRIS
FC Bldg
JP

Block A. Continued (SELECT ONE TYPE ONLY)

- ☐ ADA
- ☐ ASSAULT
- ☐ CANTEEN
- ☒ CIVIL RIGHTS VIOLATIONS
- ☐ DENIAL/RESTRICTION OF PRIVILEGES
- ☐ EMERGENCY
- ☐ FOOD
- ☐ GRIEVANCE PROCESS
- ☐ HAIRCARE
- ☐ HARASSMENT
- ☐ INMATE ACCOUNTS
- ☐ LAUNDRY
- ☐ LAW LIBRARY
- ☐ MAIL/GENERAL
- ☐ MAIL/LEGAL
- ☐ MEDICAL ACCESS
- ☐ NEW RELIGIOUS REQUEST
- ☐ OTHER
- ☐ PHONE/GENERAL
- ☐ PHONE/LEGAL
- ☐ PHYSICAL PLANT
- ☐ POLICY
- ☐ PROCEDURE
- ☐ PROGRAM ACCESS
- ☐ PROPERTY
- ☐ PUBLICATIONS
- ☐ RELIGION
- ☐ REPRISAL FOR GRIEVANCE/COMPLAINT
- ☐ RETALIATION
- ☐ SEARCHES/INSTITUTION
- ☐ SEARCHES/TAC TEAM
- ☐ SENTENCE COMPUTATION
- ☐ SMU/DDU OPERATIONS
- ☐ STAFF MISCONDUCT
- ☐ STAFF SEXUAL MISCONDUCT W/INMATES
- ☐ SUSPENSION OF NORMAL OPERATIONS
- ☐ UNIT OPERATIONS
- ☐ USE OF FORCE
- ☐ VERBAL ABUSE
- ☐ VISITS

(P.R.L.A.) Prisoner's Right /
Litigation Act.

See page #2